

# United States District Court Southern District of Texas

Case Number: 05CV1847

## ATTACHMENT

Description:

☐ State Court Record      ☒ State Court Record Continued

☐ Administrative Record

☒ Document continued - Part 15 of \_\_\_\_\_

☐ Exhibit to: \_\_\_\_\_  
number(s) / letter(s) \_\_\_\_\_

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1 remember, is there was nothing said, you know,  
2 well, I think he is or he isn't, that type of  
3 conversation. And I think after we get final  
4 place to deliberate we'll be able to discuss  
5 specifics and, you know, and whatever little bit  
6 was discussed or it will all be re-discussed in  
7 a more open environment so we can fully come to  
8 a conclusion as to what this case is about.

9 Q. Okay. Just kind of an uncomfortable  
10 situation for you to be put in a spot like this,  
11 I understand.

12 A. I understand.

13 Q. That's why this court asked you to  
14 come in and just be candid, recite if you  
15 recall. If you don't recall, that's fine too.  
16 We're not here to pick on you.

17 A. I understand.

18 Q. Thank you, sir. Appreciate your help.  
19 BY MR. SMYTH:

20 Q. Just a couple of questions, sir. I am  
21 Don Smyth. I am an assistant district  
22 attorney. I am sure you don't remember that  
23 from two days ago.

24 Let me make sure so I understand. You  
25 have not formed an opinion as to how you would

1 vote on this case one way or another?

2 A. Absolutely not.

3 Q. Obviously you haven't heard all the  
4 evidence.

5 A. That's correct.

6 Q. You have not got the judge's charge so  
7 you don't know the law that applies to the facts  
8 that you have heard?

9 A. That's correct. One of the things I  
10 do remember specific was we were wondering if we  
11 were going to get a chance to ask the judge  
12 exactly what was expected of us and how we were  
13 to be able to come to a conclusion as one  
14 specific I remember.

15 Q. And you will learn that you'll get a  
16 piece of paper that gives you all that  
17 information. That's one reason you're not  
18 suppose to be discussing anything because you  
19 don't know what law applies anyhow. So the  
20 judge is going to give you the court's charge  
21 that has all the law and procedure you're to  
22 follow in that. Since you haven't formed an  
23 opinion one way or another on how you'd vote in  
24 this case, I assume you haven't expressed any  
25 opinion to anybody about I'm going to vote this

1 way or I'm going to vote that way?

2 A. That's correct.

3 Q. Anybody expressed an opinion that  
4 they've reached a conclusion one way or another?

5 A. I don't think any specific opinions  
6 were discussed, no.

7 Q. Have you guys taken a straw poll?

8 A. No.

9 Q. How many people thinks this way or how  
10 many think that way?

11 A. Absolutely not.

12 Q. Taken any kind of votes or anything  
13 like that?

14 A. Absolutely not.

15 Q. I think you indicated that the only  
16 admonishment you recall hearing was judge asked  
17 you not to discuss this with family or friends?

18 A. That's correct.

19 Q. You don't recall hearing any other  
20 admonishment from the court -- I'm not  
21 suggesting that the court did -- that you're not  
22 to discuss it among yourselves until after you  
23 get all the evidence, get the court's charge.  
24 You don't recall that?

25 A. Right. I remember last night before

1 we left the judge said he needed to make pretty  
2 clear that we were not to discuss this with  
3 family or friends because we had not heard all  
4 the evidence and that the evidence presented was  
5 not complete also.

6 Q. Okay. Would any discussion that's  
7 been had up to this point, would that have any  
8 effect on whatever the verdict you might  
9 eventually render?

10 A. Absolutely not.

11 Q. Could you set aside anything that you  
12 heard in the way of a discussion about this case  
13 or about any witnesses or about anybody's desire  
14 to hear a particular piece of evidence until you  
15 get all of the evidence in, until you get the  
16 court's charge, then talk about?

17 A. Can you repeat the first part of  
18 that?

19 Q. Could you set aside any discussion you  
20 heard so far?

21 A. No, I could not.

22 Q. Set aside and not consider whatever  
23 has been said out there, also whatever has been  
24 said in this room, could you set that aside,  
25 render your verdict solely based upon the

1 evidence you get in this case, the court's  
2 charge as to what the law is?

3 A. Absolutely.

4 Q. After you deliberate with all your  
5 fellow jurors, once you receive the case?

6 A. Absolutely, because I do not feel that  
7 anything was said out there that would ever  
8 interject any opinions either way.

9 Q. Okay. Could you promise the judge as  
10 well as the attorneys for Mr. Eldridge that you  
11 won't discuss anything about this case from this  
12 point on?

13 A. I can guarantee it.

14 Q. Okay. Also, would you also promise  
15 all of us that you won't discuss amongst the  
16 other jurors what happened to you inside this  
17 room, what questions were asked you, what  
18 answers you gave?

19 A. Guarantee it.

20 Q. Because, obviously, that has nothing  
21 to do with how this case is decided. Could you  
22 put aside anything that's happened to this point  
23 in the trial, especially being called in here,  
24 kind of put on the hot seat, not let that affect  
25 the way you vote in this case?

1           A.     Absolutely.

2           Q.     Okay. I have no further questions,  
3 judge.

4           MR. HILL: I've no questions. Thank  
5 you, sir.

6           THE COURT: Do me a favor, have a seat  
7 out in the hallway.

8           MS. CRAWFORD: Judge, to clear things  
9 up, the second gentleman who I believe Mr.  
10 Johnson indicated that one of the persons  
11 outside was the gentleman, he said this to all  
12 of us, was the gentleman who is seated in the  
13 last chair, who stands because the witnesses  
14 can't get by.

15          THE COURT: Do you know who that is?

16          MS. CRAWFORD: I know who he was. I  
17 said he was not there because he was not there.

18          THE COURT: Go look again.

19          MR. SMYTH: Didn't Mr. Johnson point  
20 this guy out to the bailiff? Did he say this is  
21 the guy I'm talking about?

22          MS. CRAWFORD: Then as Mr. Johnson was  
23 leaving.

24          MR. SMYTH: Just want to make sure  
25 Freddy brought in the person that Mr. Johnson

1       said it was the guy in the striped shirt. So  
2       whatever.

3               MS. CRAWFORD: Can we have Mr. Johnson  
4       say if this was the man also? As he was  
5       leaving, I said was that the man he was  
6       referring to at that time, he said no.

7               THE COURT: Ask Mr. Johnson back in,  
8       please.

9               (Juror Johnson enters the courtroom).

10              THE COURT: Mr. Johnson, let me ask  
11       you a question. You now see who is out in the  
12       hallway.

13              THE JUROR: Yes.

14              THE COURT: Do you feel like we talked  
15       to everybody who was present during this  
16       conversation, or is there anybody else?

17              THE JUROR: There was one other  
18       gentleman.

19              THE COURT: Okay. Freddy, do you know  
20       which one that is?

21              THE BAILIFF: No, sir.

22              THE COURT: Once again, Mr. Johnson,  
23       go to the door.

24              THE JUROR: Sure.

25              THE COURT: Hate to put this burden on



1       you, go to the doorway, see what he is wearing,  
2       come tell Freddy so we can talk to him, too.

3               THE JUROR:   He's wearing a blue  
4       striped shirt with horn-rimmed glasses.  He is  
5       standing back there.

6               THE COURT:   Let's quit for lunch after  
7       this.

8               Come on up.  Tell me your name.

9               THE JUROR:   It's Buel Shastid.  It's  
10       B-u-e-l and S-h-a-s like Shasta Cola with  
11       t-i-d.

12              THE COURT:   Mr. Shastid, you've done  
13       nothing wrong, you're not in trouble.  Okay?

14              THE JUROR:   Okay.

15              THE COURT:   But we do need to talk to  
16       you about conversation held outside the  
17       courtroom this morning.

18              THE JUROR:   Yes, sir.

19              THE COURT:   That's what we want to  
20       do.  So I want to put you under oath.

21              (Oath administered to juror Shastid).

22              THE COURT:   If you can come up and  
23       have a seat on the witness stand.

24  
25

1 EXAMINATION

2 BY MR. HILL:

3 Q. Good morning sir. How you doing?

4 A. All right.

5 Q. I'm Wayne Hill. I don't know if you  
6 recall from a couple of days ago.

7 Just so that the record is clear,  
8 you're one of the jurors in this case? And you  
9 have sat and listened to the testimony up to the  
10 point of March 2nd, 1994; correct?

11 A. Yes, sir.

12 Q. All right. And approximately what  
13 time did you arrive here this morning to resume  
14 your service as a juror in this case?

15 A. I didn't have any watch on, but I  
16 think I got here right about maybe five minutes  
17 after nine, maybe five minutes before nine. It  
18 wasn't exactly 9:00 because I was rushing to  
19 make a phone call.

20 Q. I assure you the judge isn't going to  
21 criticize you for being a few minutes too early  
22 or too late because we're all busy in the  
23 morning trying to get things done.

24 When you first arrived here, did you  
25 meet in the hallway that's immediately outside

1       this courtroom area near some benches?

2           A.    As I came in, first I walked down  
3       here, there was nobody waiting on the bench, I  
4       tried the door, door was locked. This door was  
5       locked. So I went to the restroom, then I came  
6       back and sat down.

7           Q.    Okay.

8           A.    I was by myself when I sat down. And  
9       then the guy, I think juror number eighteen, the  
10      blonde hair guy, I don't know his name, either,  
11      he came in, he sat down. Let's see. Then came  
12      the first guy that you all called in.

13          Q.    Okay. So there was roughly three,  
14      maybe four people? Was there a female?

15          A.    We started out with three, then little  
16      by little the other jurors started coming in,  
17      and then another bailiff besides our bailiff  
18      came in, unlocked the door, then we came inside.

19          Q.    Okay. Let's talk first about what  
20      took place outside in the hallway. That's what  
21      the judge was initially asking you about. What  
22      conversations were taking place out there?

23          A.    When we were out there in the hall, we  
24      were, let's see, there was one guy, there was  
25      one guy on the jury there that, first of all,

1 let me tell you. We misunderstood that we  
2 couldn't talk about it among ourselves. I just  
3 thought we couldn't talk about it to relatives  
4 or friends.

5 Q. That's all right.

6 A. So when we were talking about it when  
7 we were in that, way over there in that jury  
8 room over there, when we were talking about it  
9 over there, what we were really doing was just  
10 exploring our thoughts on it, like we were  
11 wondering if maybe, he was wondering if maybe  
12 the prosecuting, not prosecuting but the guy  
13 that worked for the mental health mental  
14 retardation unit, we couldn't remember if he had  
15 actually said that he was going, that he was  
16 going to look for what do you call it when  
17 somebody is faking it?

18 Q. Malingering?

19 A. If he had actually said I'm going to  
20 check this guy out, look for malingering. We  
21 were trying to remember if he actually said  
22 that. I told him, well, it would be in the  
23 transcript of the thing, and I said we thought  
24 that what he had said was that he thought he had  
25 seen evidence of malingering but he didn't know

1       for sure so he was going to try and get a second  
2       opinion on it, and then it was really just kind  
3       of a comparison and contrast between the two  
4       doctors that were actually up here. And we were  
5       talking about the first doctor. We were trying  
6       to determine if he had ever given an answer, you  
7       know, a definite answer one way or the other  
8       about whether he thought the guy was incompetent  
9       or not, and we were trying to remember if he had  
10      ever used that term malingering or not.

11           Q.     Okay.

12           A.     And we were really trying to  
13      remember -- we were really kind of talking over  
14      what we'd really seen and heard trying to figure  
15      out what we'd seen.

16           Q.     Was there a give and take among the  
17      various jurors when that was going on where  
18      everybody was actively participating and you  
19      talking about?

20           A.     As it tends to be, the three men were  
21      talking. The ladies were sitting not talking,  
22      you know, because a lot of times it's just men  
23      are talking, the ladies won't talk.

24           Q.     Now, let me clarify for one minute.  
25      You were talking about the other jury room, you

1 pointed -- obviously we have no point of  
2 reference here. Are you talking about something  
3 that you were talking about today, or is this  
4 yesterday afternoon that you were referring to?

5 A. Yesterday afternoon one of the jurors  
6 had brought up the idea, the concept that the  
7 psychologist that was, that for the mental  
8 health and mental retardation had maybe had a  
9 biased observation. You remember the  
10 psychologist himself brought that up, that you  
11 could have a biased observation if you go in  
12 looking for something.

13 Q. Right.

14 A. And he was of the opinion that the  
15 psychologist was biased in his observation and,  
16 furthermore, that the other doctors over there  
17 at the unit and nurses and everybody over there  
18 was biased, and we were of the opinion that they  
19 wouldn't have any reason for being biased  
20 because their idea was to make sure everybody  
21 got a fair trial and as opposed to either being  
22 innocent or not innocent.

23 Q. Okay. Well, carrying forward to this  
24 morning, when you were out on the bench, did you  
25 pick up with that same type of conversation or

1 discussion regarding basically what I would  
2 guess called the credibility of the experts?

3 A. Well, when the guy came back in, we  
4 were trying, we were trying, we were talking  
5 over how this idea of the preponderance of the  
6 evidence, and we knew that in regular criminal  
7 cases that if the Defense has a benefit of what  
8 you call it, shadow of doubt, you know, if there  
9 is doubt about it you're suppose to assume that  
10 a defendant is innocent.

11 Q. Sure. Right.

12 A. We had the instruction at the very  
13 first that we're suppose to assume that the guy  
14 is competent unless proven to be incompetent by  
15 not the Defense but the -- I don't know exactly  
16 how you call it in this case, and we were just  
17 wondering if maybe that other guy didn't have  
18 that concept down because it seemed like he was,  
19 I don't know exactly how to put it, but it  
20 seemed like he just really thought all the  
21 testimony that came from the mental health and  
22 mental retardation was just worthless testimony,  
23 and we were of the opinion that the testimony on  
24 both sides was not worthless, that, you know, it  
25 all had to be considered.

1           Q.    Okay.  Was that discussion taking  
2 place -- I know it's difficult because we're  
3 kind of segmented or fragmented when all these  
4 conversations were taking place?

5           A.    Well, he brought it up at first.

6           Q.    Go ahead.

7           A.    Do you remember that, I am sorry to  
8 address the bailiff, but I don't remember that  
9 furthestest jury room we went to when we were  
10 waiting yesterday.  We went to so many of them,  
11 you know.  But when we were sitting over there I  
12 think maybe it could have been after lunch.

13          Q.    Okay.  Let me ask the questions so the  
14 record is, because he has not been sworn in to  
15 testify yet.

16          A.    I'm trying to get location.

17          Q.    You were in the courthouse, it's  
18 before the judge instructed you as to whether or  
19 not you were suppose to deliberate at all;  
20 correct?

21          A.    The judge, no, we hadn't had a direct  
22 thing from the judge saying to deliberate, no,  
23 sir.

24          Q.    Or to say not to deliberate, for that  
25 matter?



1           A.   As we understood, we didn't know that  
2 we couldn't talk among ourselves as long as we  
3 didn't talk to our families or friends.

4           Q.   All right. When was it that you  
5 recall Judge Harmon giving you instructions you  
6 couldn't talk to friends and family?

7           A.   Well, in the first place, we had heard  
8 it almost -- I'm trying to think -- that we had  
9 heard about that on the day when we were picked  
10 as a jury.

11          Q.   Okay.

12          A.   I was trying to remember if we had  
13 heard it from the bailiff or if we heard it from  
14 a judge, you know. I can't say for sure if we  
15 heard from the bailiff or if we heard it from  
16 the judge or if we heard it from one of the  
17 attorneys, but we heard it from somebody.

18          Q.   But clearly in your mind you didn't  
19 feel, you didn't have any reason to think that  
20 you were doing anything at all improper in  
21 discussing the evidence that you had heard up  
22 until the point in time that people started  
23 being brought in this morning, being questioned?

24          A.   Well, we thought that as long we  
25 didn't discuss it with our friends and family,

1 that everything was all right. And we were kind  
2 of proud ourselves for not discussing with our  
3 friends and family. When we were patting  
4 ourself on the back, then people started being  
5 called back in, we thought, oh, boy, we thought  
6 we were doing right.

7 Q. And as far as you knew you were doing  
8 right?

9 A. Yes.

10 Q. There's no blame here, okay?

11 A. Yes, sir.

12 Q. And I think that's real important  
13 because as a juror you're coming down here,  
14 you're doing your civic duty making sure you and  
15 the eleven others make a decision in this case  
16 correct?

17 A. Yes.

18 Q. Not about what you read in the  
19 newspaper and criticism about as it might be  
20 about the jury system, you're the one hearing  
21 all the evidence.

22 A. Yes, sir.

23 Q. Okay. Can you be as candid as you can  
24 with me. I've got thick skin. I am not going  
25 to get hurt in the least bit.

1           A.    Yes, sir.

2           Q.    For you to tell me if there were any  
3 comments made either outside here this morning  
4 or maybe in the room or at anytime regarding the  
5 fact that, you know, that a witness has a motive  
6 to either lie or to testify in a certain way?

7           A.    I think the statement that you heard,  
8 and I think I was the one that made it, was that  
9 when we were thinking about that idea of the  
10 bias either from the mental health and mental  
11 retardation or bias from the Defense  
12 psychologist, that it seemed like, that if one  
13 of them had a bias, there again, referring to  
14 what that one juror was saying, that he thought  
15 that the mental health and mental retardation  
16 guy was biased and all those other people were  
17 biased too, that we thought, well, if anybody  
18 was going to be biased it seemed it be more  
19 likely somebody who was hired for one certain  
20 thing as opposed to somebody that was on a  
21 contract.

22           Q.    Okay. And was that same statement or  
23 content of that discussed in the hallway this  
24 morning?

25           A.    I made that statement in the hall this

1 morning.

2 Q. You did?

3 A. I did.

4 Q. Tell Judge Harmon as best you can  
5 recall, I don't want to paraphrase, I'll attempt  
6 to, but tell me if I got it wrong.

7 A. Okay.

8 Q. I mean, would it have been something  
9 like, well, you know, defense expert is going to  
10 testify the way the defense wants them to?

11 A. If I remember the context of it, you  
12 might have heard the end of the sentence because  
13 I think that it would have been prefaced by if  
14 one of them was going to it would be the defense  
15 because then the defense might be able to get  
16 other spot contracts, but I said that somebody  
17 who is already on a contract, you know, and gets  
18 I didn't say assigned cases, what did he say,  
19 they were assigned cases randomly. I didn't  
20 state all of that because we already had that  
21 information, but I said as far as somebody on a  
22 contract who is going to have the same amount of  
23 work no matter how the testimony turns out.

24 Q. Okay. And that statement was made in  
25 the hallway this morning prior to coming into

1 court here today on March the 2nd, 1994?

2 A. Yes, sir.

3 Q. Okay.

4 A. And I also stated, it seems like, I  
5 didn't say, I didn't state it as a fact, and  
6 everybody knows that, as far as I know everybody  
7 knows that what we were talking about was to  
8 stay as impartial as we possibly could all the  
9 way through, so we really have wanted to be  
10 impartial from the very first.

11 Q. Would you agree or disagree with me  
12 that at various times up until right now, when  
13 we're in court, just one on one talking, with  
14 the judge here, that the jury either in small  
15 groups of less than twelve or all twelve  
16 together have sat and discussed the evidence in  
17 the case?

18 A. Yes.

19 Q. Has there been any kind of give and  
20 take or discussion or argument, let's say heated  
21 discussions regarding the evidence?

22 A. The only one that even came close was  
23 this idea of whether or not the mental health  
24 and retardation guy would have been, would have  
25 been biased. And you have to know that we never

1 did say that the defense psychologist was  
2 biased. What we were doing was we were using an  
3 analogy, saying that if, you know, why would he  
4 be biased or the other one be biased. If one  
5 was going to be biased, it seemed would be  
6 somebody on spot contract as opposed to period  
7 contract.

8 Q. Just for my reference, what do you  
9 mean spot contract as opposed to continuing one?

10 A. Like defense hired psychologist to go  
11 and interview a client just for an hour, I would  
12 say that would be like a job, you know, that  
13 time. Y'all wouldn't have him on contract to do  
14 that for y'all all the time because you do  
15 client by client, whereas the prosecution is an  
16 ongoing thing, they're always here, so they have  
17 people going over to the Harris County jail and  
18 they get their information from the data that  
19 they get from the mental unit over there, and  
20 from the doctors, that the consultants, the way  
21 we understood it, the consultants, whichever  
22 doctor it happened to be, would be the  
23 consultant that would testify, if they had  
24 whichever client they had that they happened to  
25 get randomly.

1           Q.    Tell us your honest feelings about  
2 whether you formed an opinion at this point as  
3 to the verdict that you would personally  
4 return. I am not asking you to tell me what it  
5 is, but if you have reached a point in hearing  
6 the evidence that you have already formed an  
7 opinion.

8           A.    Well, based on the testimony that I  
9 already got, yes. But that's another thing that  
10 we also said, that we were not going to allow  
11 ourselves to make a definite decision one way or  
12 the other, that since it was going to be on a  
13 preponderance of the evidence. You have to  
14 remember that most of the conversation was  
15 trying to convince the other ones that you  
16 better not make up your mind ahead of time  
17 because we won't put up with your making up your  
18 mind ahead of time because we're not letting  
19 ourselves make up our mind ahead of time, that  
20 sort of thing. So if the thing was done right  
21 away, I think I would of had a vote one way or  
22 another. Yes, I would be leaning one way or the  
23 other.

24           Q.    Okay.

25           A.    Because you said not to say.

1           Q.    Right.  I don't want you to tell us.

2           A.    But I'm still open to other evidence  
3 and other discussion, and we know the trial was  
4 not over, so we were definitely, as far as I  
5 know, nobody on the jury said that I'm going to  
6 vote this way or the other.

7           Q.    Did you get the impression, though,  
8 that most, if not all, the people have already  
9 kind of settled into having an opinion as to the  
10 outcome of the case?

11          A.    It seems to me the ones that already  
12 have that already have an in stone attitude  
13 about which way they would vote is kind of a  
14 lifestyle thing that they would have went that  
15 way one way or the other.

16          Q.    Really?

17          A.    But being a school teacher, I have  
18 learned to be an objective observer; and, so,  
19 natural you're going to have an opinion one way  
20 or the other, but I don't let my opinions  
21 through the empirical evidence.  And, so, I want  
22 to hear all the evidence.  And you remember on  
23 the first day while y'all asked why I was  
24 smiling.  The reason I was smiling was because  
25 it seemed like this is the way to find out if a



1 client is not right in the mind, seems to me, as  
2 opposed to doing it when it comes to the trial  
3 for, you know, guilty or innocent. Find out if  
4 they need treatment, see if they should have  
5 stood trial in the first place. And I was  
6 smiling because I had never heard of this before  
7 and this sounded like the way to do it.

8 Q. Right.

9 A. So from the very first, man, this is  
10 something good, this is something I'm going to  
11 be involved in.

12 Q. Maybe we should of asked you to  
13 explain to the rest of the people that were  
14 sitting there because there were a lot of people  
15 that didn't get it.

16 A. Yes, sir.

17 Q. Okay, just one minute, judge.

18 MR. HILL: I'll pass the witness.  
19 Thank you, sir.

20 BY MR. SMYTH:

21 Q. Just a couple of questions, sir. Mr.  
22 Shastid, my name is Don Smyth. I am an  
23 assistant district attorney here in Harris  
24 County, Texas. And I just want to make sure I'm  
25 clear on a couple of points.

1 First of all, you understand you  
2 haven't received all the evidence, don't know  
3 what the law that's going to tell you how you  
4 should vote or how you should apply that  
5 evidence hasn't been given to you yet.

6 A. Yes, I do.

7 Q. So the case is not over?

8 A. No, sir.

9 Q. Would it be fair to say you have not  
10 formed an opinion, since the case is not over,  
11 you don't have it yet, you have not formed an  
12 opinion one way or the other?

13 A. No, sir.

14 Q. You're open I think you said to  
15 hearing any other evidence that may come in?

16 A. I'm open and bound and determined to  
17 be open.

18 Q. You have not expressed your opinion to  
19 anybody else; have you? Since you don't have  
20 the opinion, you have not expressed it to  
21 anybody?

22 A. If anything, all I did was restated  
23 evidence that was already given.

24 Q. Has anybody else, as far as you know,  
25 expressed an opinion they're going to vote one

1 way or another say at this point?

2 A. Nobody has come right out and said I  
3 am going to vote one way or another.

4 Q. You have not taken a straw poll?

5 A. No way, no, sir, because that was one  
6 of the things that we saying, we want to hear  
7 all the evidence, we will not let ourselves go  
8 one way or the other. In fact, that's why we  
9 jumped on that one guy that thought the mental  
10 health and retardation guy was biased looking  
11 for malingering, you know, because it sounded  
12 like he was making up his mind ahead of time.  
13 That's why we jumped on him.

14 Q. You have not taken any kind of vote  
15 this morning?

16 A. No way.

17 Q. And did you indicate the only  
18 admonishment that you recall was at some point  
19 in time somebody told you not to talk to your  
20 friends and family about the case?

21 A. That's right. And I also will say  
22 that when we went to lunch over there, bailiff  
23 said not to talk about the case at all.

24 Q. Bailiff told you that?

25 A. The bailiff said that, but I thought

1       that was because we were at lunch.

2           Q.     Because you're in a public place or  
3       something?

4           A.     Right.

5           Q.     As far as the court, you don't recall  
6       the judge, I'm not saying he did, but you don't  
7       recall the judge telling you not to discuss the  
8       case among yourselves at this point?

9           A.     I do not recall the judge saying that,  
10      and I'm not saying that he didn't say it, I am  
11      just saying I don't recall it.

12          Q.     Okay.  Would any of the discussions  
13      that you heard so far have any effect upon what  
14      verdict you eventually reach once you get all  
15      the evidence, have the law?

16          A.     I don't think it would.  Just to give  
17      you an example of the type of people that are on  
18      the jury, one of the men out there and I were  
19      arguing about whether it should be health care  
20      plan or not.  He said no matter what you say,  
21      you're not going to change my mind into thinking  
22      there should be a health plan.  Well, you don't  
23      worry about me saying anything because you're  
24      not going to change your mind, and I'm not  
25      either.  So, no, sir.  I honestly believe that

1 nobody has gone any way except from the  
2 evidence.

3 Q. So nobody. You're not aware of any  
4 opinions of what their position is?

5 A. If opinion involves a decision, no,  
6 sir.

7 Q. Okay. That's what we're talking  
8 about.

9 A. Because you have the sub opinions  
10 before you make final opinion, before you make  
11 your decision.

12 Q. I'm talking final.

13 A. No final opinion, no, sir.

14 Q. I'm talking opinion on ultimate  
15 decision that's going to be decided.

16 A. No, sir.

17 Q. No opinion expressed?

18 A. No, sir. Anytime somebody was leaning  
19 that way, we would straighten them out, remind  
20 them the judge said that it was preponderance of  
21 evidence and that you don't make a decision  
22 until you heard all the evidence.

23 Q. Okay. Could you set aside anything  
24 that you may have heard in discussions at this  
25 point and base whatever final ultimate decision

1 you make solely upon all of the evidence, once  
2 you get the charge from the judge, once the jury  
3 has deliberated in the case?

4 A. Yes, sir.

5 Q. Could you promise us not to discuss  
6 this case any further among your fellow jurors  
7 or your friends and family?

8 A. Yes, sir.

9 Q. Could you put aside what has happened  
10 in this jury room -- you're one of several that  
11 have been called in here, not let that influence  
12 any opinion that you may ultimately reach on the  
13 ultimate issue in this case?

14 A. Yes, sir, especially since it was  
15 along the same lines to make sure it was  
16 impartial decision like we've been so deadset  
17 on.

18 Q. Okay.

19 A. You know, one thing that the bailiff  
20 overheard us talking about in the jury room over  
21 there, we weren't talking about this case, we  
22 were talking about the Branch Davidian type  
23 thing. The reason it came up is because I saw  
24 the attorney that was David Koresh's attorney in  
25 the building, that's what we were talking about

1 when the bailiff stuck his head in there. He  
2 admonished us not to talk about our case.

3 Q. That's the only restriction. You can  
4 talk about all kinds of things. Not like you  
5 can sit there like twelve bumps on a log and say  
6 nothing, stare at each other. You're just not  
7 to suppose to discuss this case until you have  
8 all the evidence and you have the law that  
9 applies to the case. Can you promise us that  
10 you will do that?

11 A. Absolutely.

12 MR. SMYTH: I have no further  
13 questions.

14 BY MR. HILL:

15 Q. Two questions, Mr. Shastid. Do you  
16 recall there was any evidence from any source  
17 that said that Doctor Austin, the first witness  
18 to testify, was in fact hired by the defense?

19 A. That was an assumption on my part.

20 Q. All right.

21 A. And I apologize if it was erroneous.

22 Q. No, I'm just asking specifically  
23 whether or not you heard anything to that  
24 effect.

25 Number two, has anybody concluded that

1 a doctor, in this case Doctor Austin, was hired  
2 by the defense to give a specific finding of  
3 incompetency?

4 A. No, sir. In fact, I'm not  
5 paraphrasing my statement at all when I say that  
6 we never said that he had a bias and we never  
7 said that the prosecution, the prosecution, the  
8 mental health and retardation guy had one,  
9 either. What we were saying was that they were  
10 doing their job impartially like we were. That  
11 was the flow of the conversation. And anytime  
12 somebody said, well, such and such is on that  
13 side, no, he is not. You know. Then we would  
14 use that, you know, back and forth. If one was  
15 going to be it, the other one was, and, you  
16 know, it was an assumption on my part that he  
17 was hired by the defense.

18 Q. Okay.

19 A. That was not just, you know, my  
20 opinion. Everybody shook their head when I said  
21 that, but we said if he was hired by the defense  
22 and wanted to be hired in other cases then he  
23 might do it, but nobody ever said that he did do  
24 it, just like no one would go along with the  
25 idea that the prosecution had witnesses that



1 made up their mind before they ever got in  
2 there.

3 Q. When you say that if he had gotten  
4 hired by the defense in this case that he might  
5 do it, might give a finding of incompetency,  
6 what, so he could be hired in future cases?

7 A. We thought if the likelihood of one  
8 way or another, it would be more likely would be  
9 one working on defense case by case than someone  
10 working on the contract for the State in an  
11 ongoing period of time. But no one ever said  
12 that they would. We just said that guy had said  
13 that the one for the mental health and  
14 retardation was biased.

15 Q. Okay.

16 A. It was only used as an analogy to say  
17 that he wasn't biased.

18 Q. Thank you.

19 MS. SMYTH: I have nothing further,  
20 Your Honor. Thank you.

21 THE COURT: Thank you. Do me a  
22 favor. Just have seat outside in the hallway.

23 A. Yes, sir.

24 MR. HILL: May I have moment so I can  
25 talk to Denice?

1 THE COURT: Let's stay off the record.  
2 (Off the record).

3 THE COURT: Let's go on the record.

4 MR. HILL: Judge, based on the  
5 testimony that has been adduced this morning,  
6 starting with Mr. Licata then through several  
7 other witnesses, that in varying degrees denied  
8 that this conversation or that the comments that  
9 Mr. Licata overheard took place in the hallway,  
10 finally Mr. Shastid comes in, he admits that he  
11 had made those type of statements. Now, in the  
12 context of whether we have a specific verbatim  
13 comment from Mr. Licata versus what Mr. Shastid  
14 says validates basically what Mr. Licata  
15 overheard first thing this morning. We had  
16 testimony here in varying degrees that the jury  
17 has at least engaged in partial and preliminary  
18 deliberations beginning yesterday, on March 1,  
19 1994, prior to the time that the court  
20 admonished the jury before leaving yesterday  
21 afternoon that they should not communicate with  
22 anybody regarding the case, they engaged in  
23 those discussions at least partially with four  
24 or five people in the hallway this morning, then  
25 again continuing with less than twelve people in

1 the waiting area or the waiting room of this  
2 courtroom, then subsequently with all twelve  
3 people. Again, they have not been given the  
4 jury charge, they have not heard all the  
5 evidence, the testimony is not closed in the  
6 case, the court did not give an admonishment.  
7 Once jurors were brought in one by one so that  
8 deliberation at least in part with less than  
9 twelve people were continuing while we were  
10 conducting this hearing this morning, I think  
11 that the sum and substance of all of the  
12 testimony is that the jury has been engaging in  
13 the type of the conduct, albeit in an innocent  
14 manner from their perspective, in the type of  
15 conduct that should only come after all of the  
16 evidence is in, the testimony is closed, final  
17 arguments are given, the charge is submitted to  
18 them, so that they can deliberate as a group,  
19 all twelve at one time, we feel that it is  
20 necessary to ask the jury to, I am sorry, the  
21 court to discharge the jury, declare a mistrial  
22 in this hearing on the basis that Art. 1.04,  
23 1.05, 1.051, 1.09, 1.13, 1.14 of the Code of  
24 Criminal procedure as well as Art. 1.15 of the  
25 Code of Criminal Procedure have been violated.

1 And that, additionally, Art. 35.23, 36.14,  
2 36.16, 36.18 and 36.21' of the Texas Code of  
3 Criminal Procedure have been violated, and that  
4 the U.S. Constitutional amendments number five,  
5 six, eight and fourteen have been violated, and  
6 that the Texas Constitution, Art. 1, Sec. 10,  
7 13, 15, 19 have been violated and that this  
8 defendant's substantial rights have been  
9 prejudiced by the proceedings as they have been  
10 conducted up to this point in time and,  
11 therefore, we would respectfully request that  
12 the court discharge this jury as impaneled and  
13 declare a mistrial.

14 THE COURT: I want the record to  
15 reflect that the court has observed the  
16 witnesses testify. Court is of the absolute  
17 opinion, that other than comments made by  
18 certain individual jurors about their feelings  
19 as to the credibility of certain witnesses, that  
20 none of those statements were made in an attempt  
21 to influence the opinion of any other jurors,  
22 that they're nothing more than personal  
23 comments. The court is also of the opinion that  
24 the comments were not made in the context of any  
25 kind of deliberations by those groups of jurors

1 to determine the outcome of this case. The  
2 court is absolutely convinced that each of those  
3 jurors was aware at the time, still aware, that  
4 the jurors cannot reach a decision until after  
5 they've heard all the evidence. And the court  
6 is also convinced that all those jurors can set  
7 aside the discussions that were made outside the  
8 presence of the -- outside the courtroom and  
9 make their decision based solely upon what they  
10 heard testified to from the witness stand and  
11 not allow any comments made by any other jurors  
12 to influence their decision whatsoever.

13 Now, let me take a quick look at those  
14 sections, especially the 35 and 36.

15 (Off the record).

16 THE COURT: Motion for mistrial is  
17 denied. The court has reviewed all of those  
18 sections, but the Defense motion for mistrial is  
19 denied.

20 (All jurors brought in at this time  
21 before the court).

22 THE COURT: I know everyone knows we  
23 talked to some of you this morning and have not  
24 talked to others. And I want to let everyone  
25 know that no one has done anything wrong. The

1       only person that did anything wrong is me. I  
2       made a mistake. I take full responsibility for  
3       it. I should have instructed you all yesterday  
4       that -- and I'm very well aware that I told you  
5       all last night not to talk to your friends or  
6       family about the case, I should have included  
7       instructions not to discuss the case amongst  
8       yourselves until the trial is over. That is  
9       something I generally do at various phases  
10      during the trial because when that usually  
11      occurs is lunch time. At any rate, that's  
12      neither here nor there. At any rate, I assume  
13      responsibility. However, we're now going to get  
14      back on track, all right. The people we talked  
15      to this morning aren't going to talk about what  
16      we talked about in here, so don't ask them about  
17      it. They've been told not to talk about it, so  
18      I'm telling the rest of you all not to ask them  
19      about it. So let's get back on track. We're  
20      going to finish the trial this afternoon. We  
21      should still be able to get the trial concluded  
22      today. And let's focus on what you all heard  
23      from the witness stand yesterday, focus on what  
24      you will hear from the witness stand today. I'm  
25      going to read to you all the charge when that is

1 concluded, give you all the law in Texas that  
2 pertains to how you all need to make your  
3 decision, give you all some instructions, and  
4 make your decision. So it's twelve thirty,  
5 we're going to break for lunch. As soon as  
6 Freddy is ready, he'll take you all to lunch.  
7 We'll be in recess until 1:30.

8 (Recess for lunch).  
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TRIAL COURT NO. 9403201

APPELLATE COURT NO. \_\_\_\_\_  
IN THE COURT OF CRIMINAL APPEALS  
OF THE STATE OF TEXAS  
AT AUSTIN

GERALD CORNELIUS ELDRIDGE,

Appellant

VS.

THE STATE OF TEXAS,

Appellee.

APPEAL FROM 178TH DISTRICT COURT OF HARRIS COUNTY,  
TEXAS

Judge William T. Harmon Presiding

STATEMENT OF FACTS

VOLUME 4 OF 36 VOLUMES

March 1, 1994

Ida M. Garcia

Official Court Reporter

301 San Jacinto COURT OF CRIMINAL APPEALS

Houston, Texas 77002 AUG 17 1994

Thomas Lowe, Clerk



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